

**INDIANA SECRETARY OF STATE  
SECURITIES DIVISION**

**FILED**  
MAY 01 2008

IN THE MATTER OF:	)	
	)	
REGISTRATION OF LOAN	)	
BROKERS CURRENTLY EXEMPT	)	08-0058 AO
UNDER THE INDIANA LOAN BROKER	)	
ACT	)	
	)	
	)	

**ADMINISTRATIVE ORDER**

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The Indiana Secretary of State and the Securities Commissioner have determined that it is appropriate and in the public interest to issue an Administrative Order regarding Indiana loan brokers currently exempt under Ind. Code § 23-2-5-19 and whose exemptions were removed in HEA 1359 (P.L. 145-2008.)

Statutory Context

Ind. Code § 23-2-5-19 contains exemptions from registration under the Indiana Loan Broker Act. The Indiana General Assembly through HEA 1359 (P.L. 145-2008) amended this section to remove a number of these exemptions including: (1) any person licensed as a real estate broker or sales person to the extent that the person is rendering loan related services in the ordinary course of a transaction in which a license as a real estate broker or salesperson is required, (2) any person authorized to sell and service a loan for the Federal National Mortgage Association or the Federal Home Loan Mortgage Association, (3) any person authorized to issue securities backed by the Government National Mortgage Association, (4) any person authorized to make loans insured by the United States Department of Housing and Urban Development or the United States Department of Agriculture Rural Housing Service, (5) any person authorized to act as a supervised lender or non-supervised automatic lender of the United States Department of Veterans Affairs, (6) any person authorized to act as a correspondent of loans insured by the United States Department of Housing and Urban Development if the person closes at least twenty-five (25) such loans in Indiana during each calendar year, and (7) any person who is a creditor or proposed to be a creditor for any loan. HEA 1359 provided for a new exclusion from the definition of "loan broker" under Ind. Code § 23-2-5-3(e) if the person is registered with the Department of Financial Institutions ("DFI") under the First Lien Mortgage Lending Act. HEA 1359 requires that the Securities Division and DFI issue guidelines by September 1, 2008, informing lenders and loan brokers of the appropriate agency by which they will be regulated.

## Background

The majority of HEA 1359 takes effect on July 1, 2008, with certain other provisions taking effect at later times. Section 17, which removes the exemptions from Ind. Code § 23-2-5-19, takes effect on July 1, 2008. By statute, those entities, which were exempt under the Indiana Loan Broker Act but are not exempt as a result of HEA 1359 would need to register with the Indiana Securities Division by July 1, 2008, to continue to operate in Indiana. Those entities can still claim an exclusion from the definition of "loan broker" if they are registered with DFI. This exclusion is based on whether the entity is currently registered with DFI, not whether the entity is required to be registered with DFI. However, Section 20 of HEA 1359 creating the registration with DFI under the First Lien Mortgage Lending Act does not take effect until January 1, 2009, which means that no one can register with DFI until that point. With the exclusion from the definition of loan broker based on registration with DFI, many entities that are now exempt from registration under the Indiana Loan Broker Act will be required to register with DFI and will therefore be excluded from the definition of "loan broker". The Securities Division and DFI will issue guidelines by September 1, 2008, to inform all loan brokers and lenders of the agency under which they must be registered.

Since the First Lien Mortgage Lending Act does not take effect until January 1, 2009, this leaves a six (6) month gap between the date when the exemptions are removed and the date when DFI can register lenders under the First Lien Mortgage Lending Act. By law, many entities would be required to register under the Loan Broker Act prior to July 1, 2008, and then be required to register under the First Lien Mortgage Lending Act by January 1, 2009. For the Securities Division to require registration designed to run for two (2) years but, which, in effect, would only last for six (6) months is unreasonable. Also, under HEA 1717 (P.L. 230-2007) passed by the General Assembly during the 2007 session, most of the entities exempt under the Indiana Loan Broker Act were required to file a notice filing with the Securities Division prior to January 1, 2008. As a result of that requirement, the Securities Division is aware of the entities that intend to operate as loan brokers in Indiana and where these entities are located. It is not necessary for the Securities Division to require any of the entities currently exempt, but who will lose their exemption on July 1, 2008, to register with the Securities Division until January 1, 2009.

IT IS THEREFORE ORDERED that:

All entities currently exempt under the Indiana Loan Broker Act and required to register with the Securities Division following the removal of exemptions on July 1, 2008, by HEA 1359, must register with the Securities Division under the Indiana Loan Broker Act no later than January 1, 2009.

DATED at Indianapolis, Indiana, this 1<sup>ST</sup> day of MAY, 2008.



TODD ROKITA  
SECRETARY OF STATE

A handwritten signature in cursive script, appearing to read "Chris Naylor".

CHRIS NAYLOR  
SECURITIES COMMISSIONER